

OVER BEFORE IT STARTS – A CAREER IN JEOPARDY! CASE A

*John Davies, Victoria Business School, Victoria University of Wellington, Rutherford House,
23 Lambton Quay, Wellington 6140, NZ, +64 4 4635382, john.davies@vuw.ac.nz*

ABSTRACT

The related cases A and B highlight the nature and impact of the changing stakeholder landscape of professional sport, focusing on the nature of stakeholder relationships and dynamics and their role in effecting attitudinal and cultural change within sport. The cases are set in the context of a violent incident involving an aspiring professional athlete. The cases encompass the unfolding career threatening consequences of unethical athlete behaviour; increasing calls for accountability in relation to the managerial and governance practices of sports organisations; and societal disquiet with both sport culture and the role of the legal system in pursuing and dispensing justice for victims.

Keywords: Ethical Behavior, Stakeholders, Crisis Management, Governance, Sport Culture

INTRODUCTION

The related cases A and B highlight the nature and impact of the changing stakeholder landscape of professional sport, focusing on the nature of stakeholder relationships and dynamics and their role in effecting attitudinal and cultural change within sport. The cases are set in the context of a violent late night assault involving an aspiring professional athlete, and examines the immediate and then much delayed consequences of the assault which left the athlete and his victims with career damaging outcomes; and his professional sport organisation, a sport and its governing body, with myriad unforeseen reputation damaging outcomes.

This case can be used to explore issues of ethical behaviour and moral responsibility relating to individual athletes, matters of team and franchise management, and of national body governance. It foreshadows discussion of how such behaviour may be perceived by a spectrum of stakeholders with different stakes and interests, and then how stakeholder legitimacy intersects with influence and an ability to command urgency, to impact the nature and timeliness of action taken by critical actors.

As such, cases A and B not only foreshadow and encompasses the unfolding career threatening consequences of athlete behaviour; but also increasing calls for accountability in relation to the managerial and governance practices of sports organisations. The cases also surface societal disquiet with both sport culture and the role of the legal system in pursuing and dispensing justice for victims.

This case A, and the related case B, may also be used to explore specific issues of locus of responsibility for athlete conduct that relate not only to athlete education, but to the legal and quasi-legal disciplinary processes that deal with breaches of codes of conduct. In addition, the cases provide a context for examining changing societal attitudes to alcohol and violence, on the one hand, and the management of risk, crisis and media management, on the other hand.

THE ATHLETE

Losi Filipo was a schoolboy athlete with a talent for the football codes of rugby union and rugby league. He helped his school to the 2014 finals of the Wellington province's secondary school rugby union and rugby league finals, both played on the same October weekend, and even scoring three touch downs to win the latter [1]. In that same year, he was 'scouted' by a leading Australian rugby league team to join a training camp; he became the youngest player in the New Zealand Under 16s rugby league team; and he was selected for the Wellington U16 team to compete in the Hurricanes region inter-provincial championship.

His sporting performances had also warranted a four-year academy contract with the NZ Warriors professional Rugby League club, from which he sought release to sign a two-year contract with the Wellington Rugby Football Union joining as an Academy player with hopes of progressing to the Wellington Lions semi-professional provincial rugby union team.

One year later, in his last year of school, and having starred for the Wellington representative Under 19 team in the Hurricanes region schools tournament [4].



Filipo was selected to represent New Zealand in a one-week-long Tri-Nations tournament involving Australia and the country of his parents' birth, Samoa. The tournament played through Thursday 24 September 24 to Friday 2 October, 2015 [6]. It was a shared opinion that his sporting endeavours and successes so far looked likely to lead to the career as a professional rugby union player that he wanted.

One week later, however, his life took an unexpected turn, and one year on, as the 2016 season drew to a conclusion, his rugby union career seemed to be in tatters – and in jeopardy! Having achieved an ambition of breaking in to the Wellington Lions Mitre 10 squad and becoming a professional rugby player, Filipo chose first, to withdraw from the Lions squad, and then after seeking a contract release, reached an agreement with the WRFU's CEO, Steve Roger, to terminate his contract [10]. The case sets out events leading to these decisions, the associated media attention surrounding them, the involvement of a spectrum of stakeholders, and intersection of sport and law.

THE INCIDENT

Saturday night, 10 October 2015, was a typical Saturday in Wellington's entertainment quarter - busy restaurants and bars overflowing with music, noise and people – mainly young people. Losi Filipo and his 18 year old brother, Sam, were amongst those people. As the evening wound past midnight, the effects of drink were taking their toll on many, some becoming unpleasant, others anti-social and a minority becoming aggressive and violent.

Just one week after representing New Zealand in an International Tri-Nations tournament, still at school, and six weeks before his eighteenth birthday, Losi Filipo was one of the latter. A violent incident had led to Losi Filipo and his brother being subject to serious charges – assault, assault on a female, and assault with intent to injure – involving two male and two female victims.

However, for whatever reason, during a nine months period when formal charges were first laid and when court proceedings began, the incident did not reach the media, receive media attention, or affect his employment relationship with the WRFU.

The court proceedings involved, for example, a *Case Review Hearing* held some six months later on 20 April 2016. Following this *Hearing*, Losi Filipo's legal team sought an *indication of a discharge without conviction*. Subsequently, related to information received, Filipo's legal team made an application on 13 June 2016, for discharge without conviction under s106 Sentencing Act 2002 on the four charges that he faced.

Fourteen letters of reference, and an affidavit by Filipo, were deposited in support of the application, including one from the WRFU as Filipo's employers at that time. However, just two days later, Police prosecutors formally sought to oppose any such discharge.

Coincidentally, in the following week, on 26 June, Sam Filipo pleaded guilty to assault charges, and was sentenced in the Porirua District Court to four months community detention, twelve months supervision, and ordered to pay \$1,500 by way of reparation.

Losi Filipo's request for discharge without conviction, and the police opposition to such a request, were formally considered at a formal *Sentence Indication Hearing* on 15 August 2016. Coincidentally, Filipo's *Hearing*, which attracted no media attention, followed an incident involving the players of another of NZ's

elite professional rugby teams, the Waikato Chiefs, which had saturated the media in the previous weeks, and did so for the next few months.

The Chiefs Affair involved episodes of alleged homophobia and misogyny at a post-season celebration on 1 August 2016 [7] [8]. Fed by separate initial exposure on social media, a subsequent media furore and sustained advocacy and activism by Women’s Rights and LGBT movements, led the Waikato Chiefs and the New Zealand Rugby Union to reconsider how best to address what many saw as the underlying culture within the sport that had led to such inappropriate behaviour.

In November 2016, NZR “committed to an independent *Respect and Responsibility Review* to understand how NZR can lead, develop and support people within the rugby system to be better people” [9]. This commitment was made not knowing of the Filipo assault.

THE JUDICIAL PROCEEDINGS - THE SENTENCE INDICATION HEARING

The formal *Sentence Indication Hearing (SIH)* was presided over by Judge Davidson on 15 August 2016, in the District Court at Wellington, almost one year after the assaults. Details relating to the charges became evident at the *Hearing* and were captured in the notes of Judge Davidson.

The Nature of the Incident – Revealed

Davidson’s notes recounted evidence that, “seemingly unprovoked”, Losi Filipo had ran up to one male victim, Greg Morgan, “grabbed him by the collar, punched him towards his head, knocking him unconscious, and while on the ground, stomped on him around 4 times,” causing “fairly significant injuries including concussion, grazing and bruising ... and (requiring) overnight hospitalisation “presumably for observation. The offending has had a significant effect on him and the others.” [3]. These acts had led to an initial charge of injuring.

The charges related to four victims who had been walking on the pavement/footpath when the Filipo brothers crossed the road. Sam Filipo shouted at the victims “who ignored him and kept on walking. The brothers followed the victims, challenging them to a fight. The victims said they did not want to fight.” [8].

The notes of Davidson [4] indicated that two charges of assault on a female, “apart from the fact they involve young ladies - are not particularly serious in themselves”, and that they were “more in the nature of pushing and shoving of each of them.” A fourth charge, that of assault with intent to injure involved Losi Filipo “joining in his elder brother and punching the victim – Hayden Williams - towards the head. The victim received nasty injuries. He also suffered a fractured finger which because of the nature of his work as a builder has caused him ongoing difficulties.”

The *SIH* Judgement

Davidson stated that “this was a fairly serious case of street violence, the kind of offending that is of significant concern to the public.” His judgement is set out below:

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| <ul style="list-style-type: none">• Conventional sentencing would demand a starting point of at least 1½ years’ imprisonment; such a starting point in my view would be unimpeachable. Obvious mitigating features would include his age (he was only 17 at the time), his lack of previous convictions; his remorse; willingness to undergo restorative justice; the large body of community support he enjoys suggesting an unlikelihood of ever reoffending; his commitment to counselling and voluntary community work and the like. Conventional sentencing would not see the defendant sent to prison but would see him suffer a conviction. |
| <ul style="list-style-type: none">• In my view, there are real and significant consequences of conviction for the defendant. His chosen career could well be outside his purview if convicted. ... There is no difference in assessing this than assessing someone at the beginning of any other form of career. The evidence about the potential damage to career prospects is all one way. |

- Coming to the weighing exercise, can it be said that those consequences are out of all proportion to the gravity of the offence? In my view, they are. I have to ask myself are the courts truly in the business of destroying people’s career prospects when there is a safety valve mechanism available? It has been said time and time again in recent years when dealing with applications for discharge without conviction that there was a time a generation ago when convictions were often regarded as a rite of passage. But it is only now in New Zealand in 2016 that people are truly beginning to understand the impact of convictions on people for all sorts of reasons.
- To sum up, in my view the offending is in the relatively serious category, both in itself and for the kind of offending it is. But there are significant potential consequences. For those reasons, I am prepared to indicate that were the defendant to plead guilty, he could expect to be discharged without conviction.
- Given that he has completed a significant amount of voluntary community work and has reparation funds available, they would be reflective of the kind of conditions imposed upon the discharge.

Davidson’s notes also revealed his knowledge that Sam Filipo had also been charged for his involvement with the assault, and that he had been “convicted, fined and placed on supervision.” Unlike his younger brother, Sam Filipo had previous convictions.

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SAMPLE OF CASE QUESTIONS AND DISCUSSION POINTS

Managerial Issues to Open Case Discussion

1 What action should WRFU CEO, Steve Rogers have taken when he first learning that Losi Filipo (i) had been involved in a late night assault, (ii) had been charged with assault, (iii) was facing criminal court proceedings?
2 What action should he have taken when asked to provide a letter of reference and to comment on the consequence of Filipo receiving a conviction?
3 What action would you expect fellow players, coaches or team management to take, on becoming aware of Filipo's involvement in an assault?
4 What are the implications, ethics and crisis management lessons, for those involved in management and governance?
5 Can the situation be seen as presenting opportunities for the key people to accept responsibility for leadership, values and ethics; to be honest, to behave appropriately and to convey integrity?
6 Consider whether and why inappropriate behaviour – treatment of women and minorities - is more or less acceptable in some contexts than in others.
7 Given the evidence presented at the <i>SIH</i> and the resulting <i>SIH</i> judgement, consider how and why evolving interest from different stakeholder groups might keep the spotlight on the WRFU and the New Zealand Rugby Union. Then suggest how such understanding may be folded into a crisis management plan for the WFRU.

Note:

An additional comprehensive set of questions is available that directs students through a thorough and structures case analysis:

- organising the facts in the case, exploring the role of moral emotions and moral reasoning; identifying stakeholders and conducting a stakeholder analysis; understanding the requirements of crisis and media management in the case
- before posing questions relating to:
 - managerial action, identifying lessons learned and implications for individual self- and organisational management, that help to guide responses to the questions above.

The range of questions indicate the richness of the case in facilitating discussion, developing cognitive decision making skills. As such, many different sub-sets of the questions can be used as the basis for a class-room discussion or case exercise.